

<b>State Bar Court of California</b> <b>Hearing Department</b> <b>San Francisco</b> <b>ACTUAL SUSPENSION</b>		
<b>Counsel For The State Bar</b>  Heather E. Abelson Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2357  Bar # 243691	<b>Case Number(s):</b> 12-H-18137-LMA	<b>For Court use only</b>  <b>PUBLIC MATTER</b>  <b>FILED</b> 10 <b>FEB - 8 2013</b>  <b>STATE BAR COURT CLERK'S OFFICE</b> <b>SAN FRANCISCO</b>
<b>In Pro Per Respondent</b>  Kerry Alan Halseth Attorney at Law 2895 Kalakaua Ave Apt 1607 Honolulu, HI 96815  Bar # 74513	<b>Submitted to: Assigned Judge</b>  <b>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</b>	
<b>In the Matter of:</b> <b>KERRY ALAN HALSETH</b>  Bar # 74513  A Member of the State Bar of California (Respondent)	<b>ACTUAL SUSPENSION</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

**Note:** All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted June 28, 1977.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 15 pages, not including the order.



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- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
  - ☒ Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
  - ☐ Costs are to be paid in equal amounts prior to February 1 for the following membership years: (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
  - ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
  - ☐ Costs are entirely waived.

**B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.**

- (1) ☒ **Prior record of discipline** [see standard 1.2(f)]
  - (a) ☒ State Bar Court case # of prior case 11-O-12910
  - (b) ☒ Date prior discipline effective October 27, 2011
  - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: 3-700(D)(2)
  - (d) ☒ Degree of prior discipline Private Reprimand
  - (e) ☒ If Respondent has two or more incidents of prior discipline, use space provided below.

Case No. 91-C-01968 - Respondent received a public reprimand that was effective as of June 25, 1993 in a conviction referral matter arising out of a conviction for misdemeanor battery.
- (2) ☐ **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ☒ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. See "Additional Facts Re Aggravating Circumstances" in the attachment hereto.

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- (5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) ☒ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. See "Additional Facts Re Aggravating Circumstances" in the attachment hereto.
- (8) ☐ **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.**

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☐ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ **Restitution:** Respondent paid \$            on            in restitution to            without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted in good faith.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☐ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.

- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

See "Additional Facts Re Mitigating Circumstances" in the attachment hereto.

**D. Discipline:**

(1) ☒ **Stayed Suspension:**

- (a) ☒ Respondent must be suspended from the practice of law for a period of two (2) years.
- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. ☐ and until Respondent does the following:
- (b) ☒ The above-referenced suspension is stayed.

(2) ☒ **Probation:**

Respondent must be placed on probation for a period of three (3) years, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3) ☒ **Actual Suspension:**

- (a) ☒ Respondent must be actually suspended from the practice of law in the State of California for a period of ninety (90) days.
- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. ☐ and until Respondent does the following:

**E. Additional Conditions of Probation:**

- (1) ☐ If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

- (3) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) ☒ Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) ☒ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- ☐ No Ethics School recommended. Reason: .
- (9) ☐ Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) ☐ The following conditions are attached hereto and incorporated:
- |   |   |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions         | <input checked="" type="checkbox"/> Financial Conditions  |

#### F. Other Conditions Negotiated by the Parties:

- (1) ☒ **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without**

further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.

☐ No MPRE recommended. Reason:

- (2) ☒ **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) ☐ **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) ☐ **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) ☐ **Other Conditions:**

In the Matter of: KERRY ALAN HALSETH (SBN 74513)	Case Number(s): 12-H-18137-LMA
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## Financial Conditions

### a. Restitution

- ☒ Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From
Jose Colin	\$6000	the date discipline is imposed

- ☒ Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than thirty (30) days from the date discipline is imposed. To date, Respondent has submitted to the Office of Probation satisfactory proof of five \$100 installment payments to Jose Colin, and will be given credit for these payments. To the extent that Respondent had made any additional installment payments to Jose Colin, he will receive credit for those payments upon providing satisfactory proof of those payments to the Office of Probation.

### b. Installment Restitution Payments

- ☐ Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

- ☐ If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.

### c. Client Funds Certificate

- ☐ 1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:

(Do not write above this line.)

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- a. Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";



b. Respondent has kept and maintained the following:

- i. A written ledger for each client on whose behalf funds are held that sets forth:
  1. the name of such client;
  2. the date, amount and source of all funds received on behalf of such client;
  3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
  4. the current balance for such client.
- ii. a written journal for each client trust fund account that sets forth:
  1. the name of such account;
  2. the date, amount and client affected by each debit and credit; and,
  3. the current balance in such account.
- iii. all bank statements and cancelled checks for each client trust account; and,
- iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.

c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:

- i. each item of security and property held;
- ii. the person on whose behalf the security or property is held;
- iii. the date of receipt of the security or property;
- iv. the date of distribution of the security or property; and,
- v. the person to whom the security or property was distributed.

2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.
3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. **Client Trust Accounting School**

- ☐ Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:                      Kerry Alan Halseth

CASE NUMBER(S):                      12-H-18137-LMA

**FACTS AND CONCLUSIONS OF LAW.**

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

**Case No. 12-H-18137-LMA (Probation Violation)**

**FACTS:**

1. On September 20, 2011, Respondent signed a stipulation in State Bar case number 11-O-12910 in which he agreed to receive a private reproof and promised to comply with conditions attached to the reproof for a period of one year. The conditions attached to the reproof were specified in the stipulation that Respondent signed.
2. On October 12, 2011, acting under the authority of Business and Professions Code section 6077, the State Bar Court issued an order imposing a reproof upon Respondent in case number 11-O-12910. Pursuant to California Rule of Court 9.19, the State Bar Court order required Respondent to comply with the stipulated conditions attached to the reproof. The Court found that "...the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproof...."
3. On October 12, 2011, the stipulation and order were filed with the State Bar Court Clerk's office.
4. Soon after October 12, 2011, Respondent received notice of the reproof order and reproof conditions.
5. Shortly after October 12, 2011, Respondent had actual knowledge of the reproof conditions and reproof order.
6. The reproof order and reproof conditions became effective on or about November 1, 2011, and have remained in full force at all times thereafter.
7. **QUARTERLY REPORTING CONDITION**
  - a) One of the conditions of the reproof required Respondent to submit reports as follows:  
"Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the condition period attached to the reproof. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of

the reproof during the preceding calendar quarter. Respondent must also state in each report whether there are any proceedings pending against him or her in the State Bar Court and, if so, the case number and current status of the proceeding. If the first report would over less than thirty (30) days, that report must be submitted on the next following quarter date and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the condition period and no later than the last day of the condition period."

b) Respondent violated this condition by failing to submit the final report which was due no later than November 2, 2012.

#### 8. PROOF OF RESTITUTION

a) Another of the conditions of the reproof required Respondent to submit proof of payment to Jose Colon [sic]/CSF (as applicable) in the amount of \$6,000.00, to be paid in \$100.00 monthly installments, to the Office of Probation with each quarterly report. The reproof required that Respondent pay the ordered restitution in full "not later than six months after discipline is imposed." The reproof further required that "[n]o later than 30 days prior to the expiration of the period of probation (or period of reproof), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full."

b) Respondent violated this condition by failing to submit proof to the Office of Probation that Respondent paid the ordered restitution in full by on or about October 3, 2012.

#### 9. ETHICS SCHOOL

a) Yet another condition of the reproof required Respondent to comply with the following condition:

"Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session."

b) Respondent violated this condition by failing to provide to the Office of Probation proof of his attendance at a session of Ethics School, and the passage of the test given at the end of that session, by November 2, 2012.

#### CONCLUSIONS OF LAW:

10. By not submitting the final report due no later than November 2, 2012, by not submitting proof that he paid the ordered restitution in full by July 10, 2012, and by not submitting proof that he attended Ethics School and successfully passed the test given at the end of that session, Respondent failed to comply with all conditions attached to any disciplinary probation administered by the State Bar, in wilful violation of Rules of Professional Conduct, rule 1-110.

## **ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.**

**Prior Record of Discipline:** In State Bar case no. 11-O-12910, Respondent received a private reproof for violating a single count of Rules of Professional Conduct, rule 3-700(D)(2). In State Bar case no. 91-C-01968, Respondent received a public reproof arising out of a conviction for misdemeanor battery. These two prior disciplinary actions constitute an aggravating factor pursuant to Standard 1.2(i).

**Multiple/Pattern of Misconduct:** Respondent engaged in multiple violations of the conditions attached to his private reproof in State Bar case no. 11-O-12910. Respondent's multiple acts of misconduct constitute an aggravating factor pursuant to Standard 1.2(ii).

**Harm:** One of the conditions attached to Respondent's private reproof was that he pay restitution in full by July 10, 2012 to Jose Colin. Respondent failed to do so. Respondent's misconduct caused Jose Colin financial harm, and continues to do so. Respondent's ongoing financial harm to Jose Colin constitutes an aggravating factor pursuant to Standard 1.2(iv).

## **ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.**

**Pre-trial Stipulation:** Respondent is entitled to mitigation for entering into a full stipulation with the Office of Chief Trial Counsel prior to trial, thereby saving State Bar Court time and resources. (*In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 156; *In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 993-994).

## **AUTHORITIES SUPPORTING DISCIPLINE.**

The Standards for Attorney Sanctions for Professional Misconduct provide a "process of fixing discipline" pursuant to a set of written principles to "better discharge the purposes of attorney discipline as announced by the Supreme Court." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, Introduction (all further references to standards are to this source).) The primary purposes of disciplinary proceedings and of the sanctions imposed are "the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession." (*In re Morse* (1995) 11 Cal.4th 184, 205; std 1.3.)

Although not binding, the Standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silverton* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) Any discipline recommendation different from that set forth in the applicable standards should clearly explain the reasons for the deviation. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

Here, the applicable Standards are Standards 1.7(b) and 2.9. The most severe sanction is Standard 1.7(b) which provides that if a member is found culpable of professional misconduct and the member has a record of two prior impositions of discipline as defined by Standard 1.2(f), the degree of discipline imposed in the current proceeding shall be disbarment unless the most compelling mitigating

circumstances clearly predominate. Here, it would be manifestly unjust to apply Standard 1.7 for several reasons. First, Respondent's two prior disciplinary actions resulted in a private and public reproof. Second, Respondent's first disciplinary action, which resulted in a public reproof, occurred over twenty years ago, and did not involve the practice of law. Further, there is no common thread between the three disciplinary actions because they all involve significantly different types of misconduct. Typically, when Standard 1.7(b) is applied, such a common thread exists. (*See, Arm v. State Bar* (1990) 50 Cal. 3d 763, 780). Given the fact that it would be manifestly unjust to apply Standard 1.7(b) for the reasons set forth above, Standard 2.9 should be applied instead of Standard 1.7(b).

Standard 2.9 requires that "[c]ulpability of a member of a wilful violation of rule 1-110, Rules of Professional Conduct, shall result in suspension." Based on Standard 2.9, the minimum level of discipline that should be imposed on Respondent is a suspension.

Because Standard 2.9 does not specify the precise level of discipline that should be imposed in this case, a review of applicable caselaw serves as useful guidance. In *Conroy v. State Bar* (1990) 51 Cal. 3d 799, the California Supreme Court imposed a one-year suspension, stayed, conditioned on a one-year probation and 60-day actual suspension for respondent's failure to take and pass the MPRE which was a condition of a prior private reproof. 51 Cal. 3d at 806. The Supreme Court found that respondent's misconduct was aggravated by his prior record of discipline, failure to appreciate the seriousness of the charges and a failure to demonstrate remorse for his misconduct. *Id.* at 805-806. The Supreme Court also found a lack of mitigating circumstances. *Id.* at 806.

Here, Respondent's misconduct is similar to, yet more egregious than, the misconduct at issue in *Conroy*. Respondent Conroy's misconduct did not directly harm a client, as opposed to Respondent's misconduct which did. Respondent financially harmed, and continues to financially harm, Jose Colin, because Respondent failed to timely pay the resitution in full that was to due to Mr. Colin. Respondent was also previously disciplined on two prior occasions, as opposed to respondent Conroy who had only been previously disciplined on one prior occasion. Respondent is also not entitled to any mitigation other than credit for entering into a pre-trial stipulation.

Balancing all of the appropriate factors, a 90-day actual suspension is consistent with the Standards and *Conroy*, and is appropriate taking into consideration the facts and circumstances of this case.

#### **PENDING PROCEEDINGS.**

The disclosure date referred to, on page 2, paragraph A(7), was January 22, 2013.

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of January 22, 2013, the prosecution costs in this matter are \$2,244.00. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

## **EXCLUSION FROM MCLE CREDIT**

Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School. (Rules Proc. of State Bar, rule 3201.)

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In the Matter of:  
KERRY ALAN HALSETH (SBN 74513)

Case number(s):  
12-H-18137-LMA

### SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

<u>1-29-2013</u>	<u>Kerry Alan Halseth</u>	<u>Kerry Alan Halseth</u>
Date	Respondent's Signature	Print Name
<u>2-1-13</u>	<u>[Signature]</u>	<u>Heather E. Abelson</u>
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of:  
KERRY ALAN HALSETH (SBN 74513)

Case Number(s):  
12-H-18137

### ACTUAL SUSPENSION ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- ☐ The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- ☒ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- ☒ All Hearing dates are vacated.

1. On page 7 of the stipulation, in the restitution table, "the date discipline is imposed" is deleted, and in its place is inserted "July 10, 2012".

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

Feb. 8, 2013  
Date

  
LUCY ARMENDARIZ  
Judge of the State Bar Court



## CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on February 8, 2013, I deposited a true copy of the following document(s):

### STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:

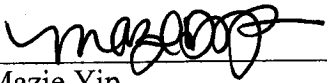
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

KERRY ALAN HALSETH  
ATTORNEY AT LAW  
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- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

HEATHER E. ABELSON, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on February 8, 2013.

  
\_\_\_\_\_  
Mazie Yip  
Case Administrator  
State Bar Court